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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, ~~1959~~ 1960

No. ~~733~~ 43

HARRY R. THOMAS, EXECUTOR, PETITIONER,

vs.

VIRGINIA.

ON WRIT OF CERTIORARI TO THE CIRCUIT COURT OF ARLINGTON COUNTY OF THE COMMONWEALTH OF VIRGINIA

PETITION FOR CERTIORARI FILED FEBRUARY 25, 1960
CERTIORARI GRANTED APRIL 4, 1960

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1959/1960

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[fol. 1] [File endorsement omitted]

IN THE CIRCUIT COURT OF ARLINGTON COUNTY COMMONWEALTH OF VIRGINIA

In Re: Estate of Crandal Mackey
Assessment of Virginia Inheritance Tax.

APPLICATION FOR RELIEF FROM SUCH ASSESSMENT—
Filed November 20, 1958

To: The Honorable Circuit Court of Arlington County, Virginia

Your petitioner, Harry R. Thomas, respectfully states as follows:

1. That he is a citizen of the United States, and a resident of Arlington County, Virginia, residing at 920 North Jefferson Street, in said County.

2. That Crandal Mackey, a citizen of the United States and of the Commonwealth of Virginia, late a resident of and domiciled in Arlington County, Virginia, died therein on March 31, 1957, leaving a last will and testament which was duly admitted to probate by this Court on April 9, 1957.

3. That your petitioner was named therein as Executor of the said will and of the estate of the said Crandal Mackey.

4. That your petitioner duly qualified as such Executor in the office of the Clerk of this Court on April 9, 1957, and has acted and continues to act as such Executor.

5. That your petitioner is aggrieved by an assessment of Virginia Inheritance Taxes made against the said Estate of the said Crandal Mackey and against your petitioner, as Executor thereof, by the State Tax Commissioners of Virginia, in the following respects:

(a) By Assessment No. 4103-58, dated June 27, 1958, and recorded in Page 374, at line 8, of the records of such assessments, the said State Tax Commissioners levied an inheritance tax against said Estate of Crandal Mackey in the total amount of $20,378.26.

[fol. 2] (b) Your petitioner alleges that the said tax of $20,378.26 was based upon a total assessment for Virginia inheritance tax purposes which erroneously included an amount of $263,100.00. Your petitioner relates that the said sum of $263,100.00, consisting of U. S. currency commonly known as paper money was owned by the said Crandal Mackey and was located, at the time of his death, in a Safe Deposit box in his name, in the Second National Bank in Washington, District of Columbia.

(c) Your petitioner further alleges that the said sum of $263,100.00 in money as aforesaid, was tangible personal property and was not located within the State of Virginia; that it was not a proper subject of assessment for inheritance taxes by the State Tax Commissioners of Virginia; that the said State Tax Commission of Virginia was and is without authority in law to impose such an assessment; that the said assessment is in violation of the laws of Virginia and of the Constitution and laws of the United States in that it is lacking in due process of law and denies to your petitioner the equal protection of law, as guaranteed to him by said Constitution; and that the assessment so imposed, and herein complained of, is utterly void and of no effect.

(d) It is further alleged that the total inheritance tax assessed by said Commissioners, amounted to $20,378.26; that the correct amount of such tax, excluding from the assessment the item of $263,100.00 herein complained of, would have been $13,795.33; that your petitioner has paid to the Treasurer of Virginia the said sum of $13,795.33; and that the difference of $6,582.93 between the tax so assessed and the tax so paid, arises exclusively from the inclusion in the total assessment of the said sum of $263,100.00 herein complained of.

[fol. 3] (e) Your petitioner further relates that the taxing authority of the District of Columbia has included the said sum of $263,100.00 in its assessment of inheritance taxes against the estate of the said Crandal Mackey, in the District of Columbia; and the resulting tax has been paid by said Estate to said District.

Wherefore, your petitioner makes application, in accordance with the provisions of Section 58-182 and related statutes, of the Code of Virginia, for the entry by this Honorable Court, of such Order or Orders as may be requisite, exonerating the Estate of the said Crandal Mackey and himself, as Executor thereof, from payment of the sum of $6,582.93, with all interest and penalties thereon, erroneously charged and assessed as inheritance taxes against said Estate, as related in the foregoing application.

Harry R. Thomas, Executor, Estate of Crandal Mackey.

Harry Lee Thomas, and Lawrence W. Douglas, Attorneys for Applicant, 404 Arlington Trust Bldg., Arlington, Virginia.

Notice:

To:

Hon. William J. Hassan, Attorney for the Commonwealth, Arlington County, Virginia.

To:

The Department of Taxation, Commonwealth of Virginia, Richmond, Virginia.

To:

Hon. H. Bruce Green, Clerk of the Circuit Court, Arlington County, Va.

Please take notice that the attached application for relief from an erroneous assessment of Virginia inheritance taxes has been filed in the office of the Clerk of the Circuit Court [fol. 4] of Arlington County, Virginia, and that on Monday, December 29, 1958, at 10 o'clock A.M., or as soon thereafter as he may be heard, the undersigned will present said application to the Circuit Court of the said County of Arlington, Virginia, in the Court Room thereof, in the County Court House in said County.

Given under my hand this 20 day of November, 1958.

Harry R. Thomas, Executor, Estate of Crandal Mackey.

Service and Certificate of Service (omitted in printing).

[fol. 6] [File endorsement omitted]

IN THE CIRCUIT COURT OF ARLINGTON COUNTY

HARRY R. THOMAS, Executor of the Estate of Crandal Mackey, Applicant,

v.

COMMONWEALTH OF VIRGINIA, Respondent.

ANSWER OF THE COMMONWEALTH OF VIRGINIA—Filed December 10, 1958

The Answer of the Commonwealth of Virginia to an application for correction of the erroneous assessment of inheritance taxes filed by Harry R. Thomas, Executor of the Estate of Crandal Mackey.

The Commonwealth, reserving to herself the benefit of all just exceptions to the said application, for answer thereto, or to so much thereof as she is advised that it is material she should answer, answers and avers [redacted]

1. Respondent admits as being true the allegations in paragraphs numbered 1 through 4 of the application.

2. Respondent admits as being true the allegations in paragraph numbered 5(a).

3. Respondent avers in answer to the allegations in paragraph numbered 5(b) that she has correctly included the sum of $263,100.00, consisting of U.S. currency, commonly known as paper money owned by Crandal Mackey and located in a safe deposit box in his name in the Second National Bank in Washington, D. C., in the total assessment for Virginia inheritance tax purposes.

[fol. 7] 4. Respondent avers in answer to the allegations in paragraph numbered 5(c) that the said sum of $263,100.00 in currency aforesaid, was intangible personal property, the situs of which for assessment of Virginia in-

heritance taxes was at the place of residence of the decedent owner, Crandal Mackey, at the time of his death.

5. Respondent avers in answer to the allegations contained in paragraph numbered 5(d) that the total inheritance tax assessed by the State Tax Commissioner of Virginia amounted to $20,378.26; that this is the correct amount of such tax; that the applicant has paid to the Treasurer of Virginia the sum of $13,795.33; that the applicant has not paid the amount of $6,582.93 which represents the proper amount of inheritance tax upon the sum of $263,100.00 in currency owned by the decedent Crandal Mackey at the time of his death.

6. Respondent neither denies nor admits the allegations made in paragraph number 5(e) of the application, and demands strict proof thereof.

And now, having fully answered the applicant's application for correction of erroneous assessment of inheritance taxes, the Commonwealth prays for this Honorable Court to find that the assessment made by the Commonwealth is correct and that the applicant be required to pay the remaining inheritance taxes due the Commonwealth of Virginia in the amount of $6,582.73, plus interest from June 30, 1958, until paid, as prescribed by § 58-177 of the Code of Virginia.

Commonwealth of Virginia, By: C. H. Morrissett,
State Tax Commissioner of Virginia.

C. F. Hicks, Assistant Attorney General of Virginia, Supreme Court Building, Richmond, Virginia, Counsel for the Commonwealth.

[fol. 9]

IN THE CIRCUIT COURT OF ARLINGTON COUNTY, VIRGINIA

In Re:

Estate of Crandal Mackey

At Law No. 6967

MEMORANDUM—June 3, 1959

From: William D. Medley, Judge

To: Lawrence Douglas, Counsel for Petitioner
Harry Lee Thomas, Counsel for Petitioner
C. F. Hicks, Assistant Attorney General, Counsel for Commonwealth of Virginia
William J. Hassan, Commonwealth Attorney for Arlington County

This Case came on to be heard upon the application for relief from assessment of Virginia Inheritance Tax, answer of the Commonwealth of Virginia, argument of counsel and authorities cited.

The Sole Issue presented to the Court for determination was whether certain personal property, hereinafter described, was tangible or intangible personal property.

Upon Consideration Whereof it is the opinion of the Court that the sum of $263,100.00, consisting of United States Currency commonly known as paper money, owned by Crandall Mackey and located, at the time of his death, in a safe deposit box in his name, in the Second National Bank in Washington, District of Columbia, was intangible personal property and a proper subject of assessment for inheritance tax by the State Tax Commissioner of Virginia.

An Order should be prepared pursuant to this memorandum and after endorsement by counsel of record, presented for entry.

June 3, 1959.

William D. Medley, Judge.

[fol. 10]

IN THE CIRCUIT COURT OF ARLINGTON COUNTY

At Law No. 6967

HARRY R. THOMAS, Executor of the Estate of Crandal Mackey, Applicant,

v.

COMMONWEALTH OF VIRGINIA, Respondent.

JUDGMENT—June 29, 1959

This Case came on to be heard, on March 23, 1959, upon the application for relief from assessment of Virginia Inheritance Tax, filed pursuant to the provisions of § 58-182 *et seq.*, of the Code of Virginia, the answer of the Commonwealth of Virginia, the testimony of witnesses and the arguments of counsel for the Applicant and of the Assistant Attorney General for the Commonwealth, and

Upon Consideration Whereof the Court being of the opinion that the sum of $263,100.00, consisting of United States Currency, commonly known as paper money, owned by Crandal Mackey and located, at the time of his death, in a safe deposit box in his name, in the Second National Bank in Washington, District of Columbia, was intangible personal property and a proper subject of assessment for inheritance tax by the State Tax Commissioner of Virginia, it is

Ordered that the application for relief be, and the same hereby is, denied, and it is further

[fol. 11] Ordered that Harry R. Thomas, Executor of the Estate of Crandal Mackey shall pay, out of the assets of said Estate now in his hands, to the Treasurer of Virginia the sum of $6,582.93, balance of inheritance tax due the Commonwealth of Virginia, with interest thereon at the rate of one per centum per month from June 30, 1958, until paid; and it is further

Ordered that the respondent Commonwealth of Virginia recover of the Applicant its proper costs in this behalf expended.

Entered this 29th day of June, 1959.

William D. Medley, Judge.

We ask for this:

John W. Knowles, Assistant Attorney General, William J. Hassan, Commonwealth's Attorney for Arlington County, Of Counsel for the Commonwealth of Virginia.

Seen and Objected to:

Lawrence Douglas, Harry Lee Thomas, Counsel for Applicant.

[fol. 12] [File endorsement omitted]

IN THE CIRCUIT COURT OF ARLINGTON COUNTY, VIRGINIA

[Title omitted]

NOTICE OF APPEAL AND ASSIGNMENT OF ERROR—Filed July 15, 1959

To the Clerk of the Circuit Court of Arlington County, Virginia:

The undersigned Counsel for Harry R. Thomas, Executor of the Estate of Crandal Mackey, applicant or petitioner in the above entitled case in the Circuit Court of Arlington County, Virginia, hereby give notice of appeal from a final order entered in said case on the 29th day of June, 1959, and set forth the following assignments of error:

1. The Court erred in denying the application of petitioner in the above case.

2. The Court erred in finding and ordering that the sum of $263,100, consisting of United States currency, commonly known as paper money, owned by the late Crandal Mackey and located at the time of his death, in a safe deposit box in his name, in a bank in Washington, D. C. was intangible

personal property and a proper subject of assessment for inheritance tax by the State Tax Commissioner of Virginia and in finding that the said property was not tangible personal property, exempt from such assessment as contended by petitioner.

Lawrence W. Douglas, Harry Lee Thomas, Counsel for Harry R. Thomas, Executor of the Estate of Crandal Mackey, Petitioner.

Certificate of Service (omitted in printing).

[fol. 16]

IN THE SUPREME COURT OF APPEALS OF THE COMMONWEALTH OF VIRGINIA

ORDER REFUSING WRIT OF ERROR—November 27, 1959

The petition of Harry R. Thomas, Executor of the Estate of Crandal Mackey, for a writ of error to a final order entered by the Circuit Court of Arlington County on the 29th day of June, 1959, in a certain proceeding then therein depending, entitled, In Re: Estate of Crandal Mackey—Assessment of Virginia Inheritance Tax, having been maturely considered and a transcript of the record of the order aforesaid seen and inspected, the court being of opinion that the said order is plainly right, doth reject said petition, and refuse said writ of error, the effect of which is to affirm the order of the said circuit court.

[fol. 17] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 18]

SUPREME COURT OF THE UNITED STATES

No. 733, October Term, 1959

HARRY R. THOMAS, Executor, Petitioner,

v.

VIRGINIA.

ORDER ALLOWING CERTIORARI—April 4, 1960

The petition herein for a writ of certiorari to the Circuit Court of Arlington County of the Commonwealth of Virginia is granted and the case is transferred to the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.